

104TH CONGRESS
1ST SESSION

S. 274

Entitled the “Old Faithful Protection Act of 1995”.

IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 10), 1995

Mr. BAUCUS introduced the following bill; which was read twice and referred
to the Committee on Energy and Natural Resources

A BILL

Entitled the “Old Faithful Protection Act of 1995”.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—OLD FAITHFUL PROTECTION**

4 **ACT**

5 **SEC. 101. SHORT TITLE.**

6 This title may be cited as the “Old Faithful Protec-
7 tion Act of 1995”.

8 **SEC. 102. FINDINGS AND PURPOSES.**

9 (a) FINDINGS.—The Congress finds that—

10 (1) Yellowstone National Park is a unique and
11 irreplaceable national and international treasure and

1 part of one of the few remaining undisturbed hydro-
2 thermal systems in the world;

3 (2) there is a risk that unrestricted hydro-
4 thermal or geothermal resource development adja-
5 cent to Yellowstone National Park in the States of
6 Montana, Wyoming, and Idaho will interfere with or
7 adversely affect the hydrothermal and geothermal
8 features of such Park or the management of relevant
9 mineral resources;

10 (3) further research is needed to understand
11 the characteristics of the thermal systems and fea-
12 tures and the effects of development on such sys-
13 tems and features on lands outside of Yellowstone
14 National Park but within the Yellowstone Protection
15 Area, as such area is defined in this title;

16 (4) preservation and protection of the thermal
17 system associated with and the features within Yel-
18 lowstone National Park is a benefit to the people of
19 the United States and the world;

20 (5) cooperation between the United States and
21 the States of Montana, Idaho, and Wyoming to pro-
22 tect and preserve Yellowstone National Park is de-
23 sirable; and

24 (6) as a settlement of litigation concerning
25 water rights, including the reserved water rights of

1 the United States associated with units of the Na-
2 tional Park System in Montana, the Department of
3 the Interior and the Department of Justice, on be-
4 half of the United States, and a Compact Commis-
5 sion, on behalf of the State of Montana, have devel-
6 oped a Compact that constitutes such a settlement
7 of litigation concerning matters within its scope and
8 which, in Article IV, establishes a program for regu-
9 lation of development and use of groundwater in
10 areas adjacent to Yellowstone National Park.

11 (b) PURPOSES.—The purposes of this title are—

12 (1) to require the Secretary to take the nec-
13 essary actions to preserve and protect the thermal
14 systems and features of Yellowstone National Park;

15 (2) to provide a framework for management by
16 the States of Montana, Wyoming, and Idaho of reg-
17 ulated resources within the Yellowstone Protection
18 Area outside of but directly related to Yellowstone
19 National Park to preserve and protect the thermal
20 systems and features of Yellowstone National Park;

21 (3) to authorize, as provided in section 8, ap-
22 proval of Article IV of the Compact as an appro-
23 priate State program;

24 (4) to require relevant research; and

1 (5) to authorize to be appropriated, as provided
2 in section 112, necessary sums.

3 **SEC. 103. DEFINITIONS.**

4 For purposes of this title:

5 (1) The term “Secretary” means the Secretary
6 of the Interior except as otherwise provided.

7 (2) The term “Yellowstone Protection Area”
8 means the area in Montana, Idaho, and Wyoming
9 identified on the map entitled “Yellowstone Protec-
10 tion Area”, numbered 20036A, and dated July
11 1994, and any modifications thereof as may be made
12 under section 7.

13 (3) The term “thermal systems and features”
14 means the hydrothermal and geothermal systems
15 and features of Yellowstone National Park associ-
16 ated with the regulated resources within the Yellow-
17 stone Protection Area.

18 (4) The term “regulated resources” means—

19 (A) geothermal steam and associated geo-
20 thermal resources, as defined in section 2(c) of
21 the Geothermal Steam Act of 1970 (30 U.S.C.
22 1001(c)); or

23 (B) groundwater with a temperature in ex-
24 cess of 59 degrees Fahrenheit.

1 (5) The term “well” means a well or facility
2 producing or intended to produce regulated re-
3 sources but excludes facilities that would do no more
4 than utilize the natural unenhanced surface flow of
5 a natural spring.

6 (6) The term “approved State program” means
7 a program of Montana, Idaho, or Wyoming that has
8 been submitted to the Secretary and has been ap-
9 proved pursuant to this title.

10 (7) The term “Compact” means the water
11 rights compact entered into by the United States
12 and the State of Montana on January 31, 1994.

13 (8) Except as otherwise provided in this title,
14 terms used in this title shall have the same meaning
15 as in the Geothermal Steam Act of 1970.

16 **SEC. 104. RESTRICTION ON FEDERAL LANDS.**

17 (a) The Congress hereby declares that—

18 (1) Yellowstone National Park possesses nu-
19 merous thermal features, including Old Faithful gey-
20 ser and approximately 10,000 other geysers and hot
21 springs, and is hereby designated as a significant
22 thermal feature unto itself; and

23 (2) Federal legislation is desirable to preserve
24 and protect these features.

1 (b) The Congress hereby declares that any use of, or
 2 production from, any existing well, or any exploration for,
 3 or development of, any new well within the boundary of
 4 the Yellowstone Protection Area, as defined in section
 5 103(2) of the Old Faithful Protection Act of 1995, risks
 6 adverse effects on the thermal features of Yellowstone Na-
 7 tional Park.

8 (c) Notwithstanding any other provision of law, the
 9 Secretary shall not issue any geothermal lease pursuant
 10 to the Geothermal Steam Act (30 U.S.C. 1001 and follow-
 11 ing) for lands within the boundary of the Yellowstone Pro-
 12 tection Area. Nothing in this section shall be construed
 13 to apply to any lands not owned by the United States.

14 **SEC. 105. MORATORIUM ON LANDS WITHIN THE YELLOW-**
 15 **STONE PROTECTION AREA.**

16 (a) PROHIBITION.—Except as provided by sections
 17 107 and 108 of this title, there shall be no use (except
 18 for monitoring by the Secretary or monitoring under an
 19 approved State program) of, or production from, any ex-
 20 isting well and no exploration for, or development of, any
 21 new well within the Yellowstone Protection Area.

22 (b) MANAGEMENT.—The Secretary shall review Na-
 23 tional Park Service management of Yellowstone National
 24 Park and shall take such steps as may be necessary to

1 protect and preserve the thermal systems and features of
2 such National Park.

3 **SEC. 106. RESEARCH.**

4 (a) IN GENERAL.—The National Park Service, in
5 consultation with the Forest Service, the United States
6 Geological Survey, and each State agency implementing
7 an approved State program, shall research the characteris-
8 ties of the thermal systems and features within the Yellow-
9 stone Protection Area, inventory and research the existing
10 and potential effects (including cumulative effects) of hy-
11 drothermal or geothermal development on such systems
12 and features, and periodically, but not less than once every
13 five years, inform Congress concerning the results of such
14 inventory and research.

15 (b) UNDER STATE PROGRAM.—If an approved State
16 program provides for research described in subsection (a),
17 both the Secretary and the relevant State may conduct
18 such research within the Yellowstone Protection Area.

19 (c) NONINTRUSIVE METHODOLOGIES.—Except for
20 research within a National Park System unit within the
21 Yellowstone Protection Area approved by the Secretary or
22 elsewhere under a permit issued by a State agency imple-
23 menting an approved State program, research pursuant
24 to this section shall exclusively use nonintrusive meth-
25 odologies.

1 (d) LIMITATION.—Nothing in this title shall be con-
2 strued as authorizing any activities within any unit of the
3 National Park System in the Yellowstone Protection Area
4 inconsistent with laws or policies applicable to the relevant
5 unit.

6 **SEC. 107. STATE MANAGEMENT PROGRAMS.**

7 (a) DEVELOPMENT.—The States of Montana, Wyo-
8 ming, and Idaho are encouraged to develop and maintain
9 State programs for the management of regulated re-
10 sources outside of Yellowstone National Park to preserve
11 and protect the thermal systems and features of Yellow-
12 stone National Park.

13 (b) PERMIT.—Except as provided for in section 6, as
14 of the date of enactment of this title, no person shall en-
15 gage in any use (including research), production, explo-
16 ration, or development of any regulated resources on non-
17 Federal lands within the Yellowstone Protection Area ex-
18 cept to the extent authorized by a permit issued by a State
19 agency implementing an approved State program.

20 (c) STATE AUTHORITY.—(1) In the implementation
21 of an approved State program, a State may exercise the
22 authority to grant permits under subsection (b) for the
23 use (including research), production, exploration, or devel-
24 opment of any regulated resources within the Yellowstone
25 Protection Area.

1 (2) Notwithstanding any other provision of law, no
2 permit within the Yellowstone Protection Area for regu-
3 lated resources issued prior to the date of enactment of
4 this title shall be deemed to have been issued in the imple-
5 mentation of an approved State program: *Provided*, That
6 permits issued by the State of Montana after January 31,
7 1994, shall be deemed to have been issued in the imple-
8 mentation of an approved State program.

9 (3)(A) The Secretary shall monitor the implementa-
10 tion of an approved State program (including the State's
11 enforcement thereof) to assure consistency with the re-
12 quirements of this title.

13 (B) The Secretary may suspend implementation of an
14 approved State program if such implementation (including
15 the State's enforcement thereof) is not being exercised in
16 a manner consistent with this title. During any such sus-
17 pension, no permit granted under such program shall be
18 effective except to the extent the Secretary determines
19 that the permitted activities would be consistent with the
20 purposes of this title.

21 (C) If an approved State program includes proce-
22 dures for the exercise of the Secretary's authority to sus-
23 pend such a program's implementation, the Secretary
24 shall follow such procedures. If no such procedures are

1 included in a State program, the Secretary shall provide
2 notice and a reasonable time to comply with this title.

3 (d) APPROVAL BY THE SECRETARY.—(1) The Sec-
4 retary shall approve a program submitted by a State if
5 the Secretary determines that such program, when imple-
6 mented, will fulfill the purposes of this title regarding the
7 protection of the thermal systems and features of Yellow-
8 stone National Park.

9 (2) The Secretary shall not approve any State pro-
10 gram submitted under this section until the Secretary
11 has—

12 (A) solicited, publicly disclosed, and considered
13 the views of the heads of other State and Federal
14 agencies the Secretary determines are concerned
15 with the proposed State program;

16 (B) solicited, publicly disclosed, and considered
17 the views of the public; and

18 (C) found that the State has the necessary legal
19 authority and personnel for the regulation and man-
20 agement of regulated resources outside Yellowstone
21 National Park consistent with the requirements of
22 this title.

23 (3)(A) The Secretary may approve or disapprove a
24 program in whole or in part.

1 (B) If the Secretary disapproves any proposed State
2 program, in whole or in part, the Secretary shall notify
3 the State in writing of the decision and set forth in detail
4 the reasons therefor. The State may submit a revised
5 State program or portion thereof.

6 (4) The Secretary shall not approve any State pro-
7 gram that does not, at a minimum—

8 (A) include ongoing scientific review of restric-
9 tions, boundaries, and permits applicable to the de-
10 velopment of a regulated resource;

11 (B) require that, in conducting the scientific re-
12 view referred to in subparagraph (A) and in imple-
13 menting the State program, any doubt shall be re-
14 solved in favor of protection of the thermal systems
15 and features of Yellowstone National Park; and

16 (C) allow the State agency authorized to admin-
17 ister the program to reject recommendations based
18 on the scientific review referred to in subparagraph
19 (A), to the extent such rejection is necessary to pro-
20 tect and preserve the thermal systems and features
21 of Yellowstone National Park.

22 (e) SCOPE.—Except to the extent an approved State
23 program is being implemented by a State, section 105(a)
24 of this title shall apply to the Yellowstone Protection Area.

1 (f) MODIFICATION OF YELLOWSTONE PROTECTION
2 AREA.—(1) The boundaries of the Yellowstone Protection
3 Area in a State may be modified pursuant to an approved
4 State program if such modification is approved by the Sec-
5 retary.

6 (2) The Secretary shall not approve any such modi-
7 fication that the Secretary finds would not be consistent
8 with the purposes of this title.

9 (3) The Secretary shall revise the map of the Yellow-
10 stone Protection Area to reflect any approved boundary
11 modifications.

12 (4) If an approved State program includes procedures
13 for the exercise of the Secretary's authority to approve
14 modifications of the boundaries of the Yellowstone Protec-
15 tion Area, the Secretary shall follow such procedures.

16 (g) COOPERATIVE AGREEMENT.—The Secretary is
17 authorized to enter into cooperative agreements with the
18 States of Montana, Idaho, and Wyoming and with the Sec-
19 retary of Agriculture to fulfill the purposes of this title.

20 (h) FEDERAL FINANCIAL ASSISTANCE.—(1) Subject
21 to appropriation, the Secretary may provide financial as-
22 sistance for the implementation of an approved State pro-
23 gram. In providing such assistance, the Secretary may
24 enter into appropriate funding agreements, including
25 grants and cooperative agreements, with a State agency

1 or agencies, upon such terms and conditions as the Sec-
 2 retary deems appropriate.

3 (2) A recipient State may invest fund provided under
 4 this subsection so long as such funds, together with inter-
 5 est and any other earnings thereon, shall be available for
 6 use by the State only under the terms and conditions of
 7 the approved State program and an agreement entered
 8 into with the Secretary under this subsection and shall
 9 not be used by the State for any other purpose.

10 **SEC. 108. MONTANA PROGRAM.**

11 (a) APPROVAL.—(1) The Congress finds that Article
 12 IV of the Compact fulfills the purposes of this title regard-
 13 ing the protection of the thermal systems and features of
 14 Yellowstone National Park.

15 (2) All provisions of section 107 are applicable to this
 16 section, except for purposes of section 107(d)(1) the Com-
 17 pact shall be deemed to have been submitted to the Sec-
 18 retary, and, notwithstanding sections 107(d)(2),
 19 107(d)(3), and 107(d)(4), Article IV thereof shall be con-
 20 sidered an approved State program for regulation of
 21 groundwater resources within the Montana portion of the
 22 Yellowstone Protection Area. Article IV of the Compact
 23 shall not be considered an approved State program for the
 24 management of regulated resources within the Montana

1 portion of the Yellowstone Protection Area other than
2 groundwater resources.

3 (b) SCOPE.—Nothing in this title shall be construed
4 as amending the Compact or as altering its status in rela-
5 tionship to any litigation with regard to water rights.

6 (c) REVIEW PROCEDURES.—For purposes of sections
7 107(c)(3)(B), 107(c)(3)(C), 107(f)(1), and 107(f)(2), the
8 provisions of the Compact with respect to—

9 (1) review of administrative decisions under Ar-
10 ticle IV of the Compact;

11 (2) enforcement of the Compact;

12 (3) the discretion of any party to the Compact
13 to withdraw therefrom; and

14 (4) modification of boundaries and restrictions
15 within the Controlled Groundwater Area, shall be
16 deemed to be procedures for the exercise of the Sec-
17 retary's authority to approve modifications of the
18 boundaries of the Yellowstone Protection Area or to
19 suspend the implementation of an approved State
20 program.

21 **SEC. 109. IDAHO AND WYOMING PROGRAMS.**

22 (a) Section 104, subsection 105(a), subsection
23 107(b), and paragraph 107(c)(2) shall not be effective
24 with respect to the Yellowstone Protection Area within the
25 State of Idaho and the State of Wyoming for two years

1 after the date of enactment of this title if the Governor
2 of the State notifies the Secretary that the State will pro-
3 hibit any permit action or other approval action involving
4 regulated resources within the Yellowstone Protection
5 Area during such two-year period.

6 (b)(1) The State of Wyoming or the State of Idaho
7 may, within the two-year period provided for in subsection
8 (a), submit a State program to the Secretary for approval.

9 (2) Upon receipt of a State program within the two-
10 year period provided for in subsection (a), the Secretary
11 shall review such program pursuant to section 107.

12 (c) Section 104, subsections 105(a), 107(b), and
13 paragraph 107(c)(2) shall become effective with respect
14 to the Yellowstone Protection Area within the State of
15 Idaho or the State of Wyoming—

16 (1) upon the approval or disapproval of the re-
17 spective State program;

18 (2) at the end of the two-year period provided
19 for in subsection (a); or

20 (3) if the State takes any permit action or other
21 approval action contrary to the notification provided
22 to the Secretary pursuant to subsection (a).

23 **SEC. 110. JUDICIAL REVIEW.**

24 (a) ADMINISTRATIVE PROCEDURES.—Except as pro-
25 vided in this section, any Federal agency action or failure

1 to act to implement or enforce this title shall be subject
 2 to judicial review in accordance with and to the extent pro-
 3 vided by chapter 7 of title 5, United States Code.

4 (b) REMEDY.—The sole remedy available to any per-
 5 son claiming deprivation of a vested property right by en-
 6 actment of this title or Federal action pursuant to this
 7 title shall be an action for monetary damages, filed pursu-
 8 ant to section 1491 or 1505 of title 28, United States
 9 Code, in the Court of Federal Claims. Any just compensa-
 10 tion awards determined by the Court of Federal Claims
 11 to be due to a claimant shall be paid consistent with sec-
 12 tion 2517 of such title.

13 **SEC. 111. REGULATIONS.**

14 No later than two years after the date of enactment
 15 of this title, the Secretary shall promulgate such rules and
 16 regulations as are necessary to implement this title.

17 **SEC. 112. AUTHORIZATION OF APPROPRIATIONS.**

18 There are authorized to be appropriated such sums
 19 as may be necessary to carry out this title.

20 **SEC. 113. SCOPE OF TITLE.**

21 Nothing in this title shall be construed as increasing
 22 or diminishing any rights of the United States with re-
 23 spect to water, or as affecting any previous adjudication
 24 of or any agreement concerning any such rights.

1 **SEC. 114. LAND EXCHANGE.**

2 (a) GENERAL.—Notwithstanding any other provision
 3 of law and subject to the provisions of this title, the Sec-
 4 retary of Agriculture shall acquire by exchange certain
 5 lands and interests in lands owned by the Church Univer-
 6 sal and Triumphant, its successors and assigns, (referred
 7 to in this title as “the Church”), located in the Yellow-
 8 stone Controlled Groundwater Area and Corwin Springs
 9 Known Geothermal Resource Area of the Gallatin Na-
 10 tional Forest.

11 (b) OFFER AND ACCEPTANCE OF LAND AND INTER-
 12 EST IN LAND.—

13 (1) NON-FEDERAL LANDS AND INTERESTS.—If
 14 the Church offers—

15 (i) title that is acceptable to the United
 16 States to all rights, title, and interests to ap-
 17 proximately 26 acres of land owned by the
 18 Church as depicted on the maps entitled
 19 “Church/Forest Services Land Exchange Pro-
 20 posal”, dated July 1994;

21 (ii) all right, title and interest to the sub-
 22 surface regulated resources estate on all Church
 23 properties within the Yellowstone Controlled
 24 Groundwater Area;

25 (iii) a perpetual public access road and
 26 utility easement of sixty feet in width, plus al-

lowance for cuts and fills, over Church property to the Gallatin National Forest lands in the Cutler Homestead/Sentinel Butte area, as depicted on the maps referenced in paragraph (b)(1)(i); and

(iv) other rights and covenants in accordance with the terms of the “Church/Forest Service Land Exchange Specifications” document prepared pursuant to paragraph (b)(3); the Secretary of Agriculture shall accept a warranty deed to the land specified in paragraph (b)(1)(i), a special warranty deed to the regulated resources specified in paragraph (b)(1)(ii), State water rights transfer documents, and any other such instruments as may be necessary to transfer the above referenced property interests.

(2) FEDERAL LAND AND INTERESTS.—

(A) GENERAL.—Upon acceptance by the Secretary of Agriculture of title to the lands, interests, and rights and covenants offered by the Church pursuant to paragraph (b)(1)—

(i) the Secretary, upon request by the Secretary of Agriculture, shall convey by patent to the Church, subject to all valid existing rights, and a reservation to the

1 United States of all regulated resources,
2 title to approximately 11 acres within the
3 Gallatin National Forest, as depicted on
4 the map referenced in paragraph (b)(3);

5 (ii) the Secretary of Agriculture shall
6 convey an easement to the Church grant-
7 ing the right to collect and transport
8 across Federal lands the natural
9 unenhanced surface flow at LaDuke Hot
10 Springs from its source to the east bank of
11 the Yellowstone River as depicted on the
12 maps referenced in paragraph (b)(1), and
13 the United States shall withdraw all of its
14 water rights claims and objections filed
15 with regard to LaDuke Hot Springs in
16 pending water rights adjudications under
17 Federal and State law;

18 (iii) the Secretary shall grant to the
19 Church standard Forest Service rights-of-
20 way authorizations for existing roads
21 across National Forest System land as
22 generally depicted on the maps referenced
23 in paragraph (b)(1) and further defined by
24 the document referenced in paragraph
25 (b)(1)(i); and

1 (iv) the Secretary shall grant to the
2 Church other rights and covenants in ac-
3 cordance with the terms of the “Church/
4 Forest Service Land Exchange Specifica-
5 tions” document pursuant to paragraph
6 (b)(3).

7 (B) SURVEYS.—Surveys prepared to stand-
8 ards approved by the Secretary shall be fur-
9 nished by the Church for the affected Federal
10 and non-Federal lands and surface interests
11 prior to conveyance of the Federal lands and in-
12 terests in this exchange.

13 (3) AGREEMENT.—The document entitled
14 “Church/Forest Service Land Exchange Specifica-
15 tions,” jointly developed and agreed to by both par-
16 ties, shall define the non-Federal and Federal lands
17 and interests involved in this exchange, including
18 legal descriptions of lands and interests, and other
19 terms, conditions, and covenants, but shall not in-
20 clude any minimum surface flow requirements to the
21 Yellowstone River from LaDuke Hot Springs. Such
22 document, upon completion, shall be transmitted to
23 the Committee on Energy and Natural Resources of
24 the United States Senate and the Committee on Re-
25 sources of the United States House of Representa-

1 tives and shall not take effect until sixty days after
2 receipt by both Committees.

3 (c) TITLE.—

4 (1) REVIEW OF TITLE.—Within ninety days of
5 receipt of the approved surveys and title documents
6 from the Church, the Secretary shall review the title
7 for the non-Federal lands described in paragraph (b)
8 and determine whether—

9 (A) the applicable title standards for Fed-
10 eral land acquisition have been satisfied subject
11 to any variances expressly contained in this
12 title; and

13 (B) all draft conveyances and closing docu-
14 ments have been received and approved.

15 (2) CONVEYANCE OF TITLE.—In the event the
16 quality of title does not meet Federal standards or
17 is otherwise unacceptable to the Secretary, the Sec-
18 retary shall advise the Church regarding corrective
19 actions necessary to cure title defects. The convey-
20 ance of lands to the Church described in paragraph
21 (b)(2)(A) shall be completed not later than ninety
22 days after the Secretary has approved title.

23 **SEC. 15. GENERAL PROVISIONS.**

24 (a) MAPS AND DOCUMENTS.—The maps referred to
25 in section 14 are subject to corrections for any technical

1 errors in describing the properties. The maps and docu-
2 ments described in section 14(b) (1) and (3) shall be on
3 file and available for public inspection in the Office of the
4 Chief of the Forest Service, in Washington, D.C.

5 (b) NATIONAL FOREST SYSTEM LANDS.—All lands
6 and interests in lands conveyed to the United States under
7 this title shall be administered in accordance with the laws
8 and regulations pertaining to the National Forest System.

9 (c) VALUATION.—The value of the lands and inter-
10 ests in lands to be exchanged under this title and de-
11 scribed in section 14(b) are deemed to be equal, and there-
12 fore, no appraisals shall be required.



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